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10 **merger from Rabobank**11 **UNITED STATES BANKRUPTCY COURT**12 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**13 **In re**14 **VICTORIA M. GEWALT,**15 **Debtor.**16 **Case No. 21-20600**17 **Subchapter V Chapter 11**18 **DC No.: TRN-2**19 **SECURED CREDITOR MECHANICS**
20 **BANK'S OBJECTION TO DEBTOR'S**
21 **PROPOSED SUBCHAPTER V PLAN**22 **Hearing –**23 **Date: July 14, 2021**24 **Time: 11:00 a.m.**25 **Ctrm: Courtcall**26 **Place: 501 I Street**
27 **Sacramento, CA 95814**28 **Judge: Hon. Christopher M. Klein**29 **TO THE HONORABLE CHRISTOPHER M. KLEIN, UNITED STATES BANKRUPTCY**
30 **JUDGE, AND RESPONDENTS:**31 **Secured creditor Mechanics Bank, successor-by-merger to Rabobank, N.A. hereby objects**
32 **to the Debtor's proposed Subchapter V Plan. In support thereof, Mechanics Bank submits as**
33 **follows:**

STATEMENT OF FACTS

A. GENERAL BACKGROUND

1. On October 8, 2008, Charles D. Gewalt and Debtor, Victoria M. Gewalt, Trustees of the Gewalt Revocable Trust U/A/D November 6, 1989 (herein "Debtor"), executed an Adjustable Rate Note secured by a Deed of Trust recorded on real property commonly described as 9649 Sterling Pointe Court, Loomis, CA 95650 ("the Sterling Pointe Court Property"). The Note and Deed of Trust was in the original principal sum of \$1,162,500.00. The contractual rate of interest was 6.25%, but is now 2.375%. Principal and interest payments continue to accrue at the rate of \$8,085.34 per month. [Cook Declaration ¶ 4; Exhibits "1" and "2" to Cook Declaration].

2. Since June 5, 2012, the Sterling Pointe Court Property has been in and out of foreclosure:

On June 5, 2012, a Notice of Default was recorded on the subject property.

On February 21, 2013, a Rescission of the Notice of Default was recorded.

On May 24, 2017, a Notice of Default was recorded on the subject property.

On September 27, 2017, a Rescission of the Notice of Default was recorded.

On June 4, 2018, a Notice of Default was recorded on the subject property.

On February 22, 2019, a Rescission of the Notice of Default was recorded.

On July 2, 2019, a Notice of Default was recorded on the subject property.

[Cook Declaration ¶ 7.]

3. Debtor remains past due on the Mechanics Bank loan since February 1, 2019. The Debtor is in arrears for the time period between February 1, 2019 to June 1, 2021 in the amount of \$226,748.16. Mechanics Bank has not received payments during this Chapter 11 proceeding.

[Cook Declaration ¶8-9.]

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1 **B. THE BANKRUPTCY PROCEEDING**

2 4. The Debtor filed the within Chapter 11 proceeding on February 22, 2021.

3 5. On March 4, 2021, the Debtor filed her Schedules and Statement of Financial
4 Affairs. Therein, Schedule I reflected monthly income of \$7,600 per month and basic monthly
5 living expenses (not including expenses not related to her residence) of \$7,768. [Debtor's
6 Schedules and Statement of Financial Affairs]. However, on March 5, 2021, the Debtor filed her
7 amended Statement of Current Monthly Income, which indicated that her income was only \$6,500
8 per month. [Debtor's Amended Statement of Current Monthly Income].

9 6. Thus, not only does the Debtor not have sufficient income to pay for any expenses
10 associated with the properties that are not her residence, The Debtor has insufficient income to
11 maintain her own monthly living expenses.

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13 **C. THERE IS NO EQUITY IN THE STERLING POINT PROPERTY**

14 7. The Debtor's Schedule D ¶ 2.6, represents that the liquidation value of the Sterling
15 Pointe Property is \$1,500,000. The amount owing to Mechanics Bank as of June 8, 2021 is
16 \$1,332,994. [Cook Declaration ¶ 11.] And, there is a deed of trust in favor of Safy Khalifa in the
17 amount off \$100,000, recorded on the Sterling Pointe Property. [Debtor's Schedule D, ¶ 2.9.]
18 There is also an abstract of judgment in the amount of \$246,572. [Cook Declaration ¶ 18; Exhibit
19 "5".] Since the abstract of judgment has not been avoided, there is no equity in the Sterling
20 Pointe Property (\$1,500,000 minus \$1,679,000 in liens, minus \$129,500 in hypothetical costs of
21 sale, leaves negative equity). That negative equity is quickly increasing at the rate of \$8,085.34
22 per month, as the Debtor has not and does not propose to make payments. As such, Mechanic's
23 Bank has filed a Motion for Relief from Stay, which is presently set for hearing on July 14, 2021.

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1 **D. THE PLAN OF REORGANIZATION**

2 8. On April 13, 2021, the Debtor filed her Chapter 11 Plan. The Plan does not
3 provide for payments to creditors from the Debtor's monthly disposable income as the Debtor has
4 no monthly disposable income. Rather, under the Plan, both secured and unsecured creditors will
5 receive nothing until the properties are sold or refinanced.

6 9. With regard to the treatment of Mechanic's Bank, the Plan does not propose to cure
7 the existing default through periodic cure payments (11 U.S.C. § 1124(2)) or make any payments
8 to Mechanic's Bank whatsoever. Thus, principal and interest payments continue to accrue at the
9 rate of \$8,085.34 per month. Moreover, once the stay is no longer effect (e.g. upon confirmation),
10 Mechanic's Bank would be permitted to conclude its foreclosure sale as the loan would still be in
11 default.

12 10. On May 25, 2021, Mechanic's Bank cast its ballot against the Plan.

13 11. On June 2, 2021, the Debtor filed its Confirmation Memorandum, which slightly
14 modified the treatment of Mechanic's Bank, but still did not propose to cure the default by
15 submission of monthly arrearage and regular mortgage payments.

16 12. At the hearing on Confirmation on June 9, 2021, the Court continued the hearing
17 on confirmation to July 14, 2021.

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19 **MEMORANDUM OF POINT AND AUTHORITIES**

20 **I.**

21 **THE PLAN IMPROPER MODIFIES A DEBT SECURED**

22 **SOLELY BY THE DEBTOR'S RESIDENCE**

23 13. A plan may not modify a debt secured solely by the debtor's principal residence. 11
24 U.S.C. § 1123(b)(5). In the present case, the Debtor's Plan improperly modifies Mechanics Bank's
25 loan, by eliminating the Debtor's obligations to make monthly payments, making no provision for
26 curing the arrears and making no provision for the accrual of interest at the default rate.

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II.

**THE PLAN IS NOT FAIR AND EQUITABLE AS TO THE TREATMENT OF
MECHANICS BANK AND THUS, CANNOT BE CONFIRMED OVER ITS OBJECTION**

14. A plan can only be confirmed over the objection of a non-consenting class of creditors if the plan comports with Bankruptcy Code § 1129(b)(1). To do so, the plan cannot unfairly discriminate and must be fair and equitable to the creditor. Under Bankruptcy Code § 1129(b)(2)(A), a plan is fair and equitable as to a class of secured claims if the plan provides:

(i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property; . . .

15. Thus, a plan is fair and equitable to a class of secured claim holders if such holders receive deferred cash payments totaling at least the allowed amount of their claims.

16. Here, the Debtor provides for no periodic payments of any amount, nor does the Debtor have the means to do so. Accordingly, the Plan cannot be confirmed over Mechanic Bank's objection as the Plan is not fair and equitable.

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III.

CONCLUSION

17. For the foregoing reasons, Mechanics Bank respectfully requests that confirmation be denied.

DATED: June 25, 2021

PRENOVOST, NORMANDIN, DAWE & ROCHA
A Professional Corporation

By: /s/ Tom R. Normandin

TOM R. NORMANDIN

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